

United States District Court Southern District of Texas

Case Number: H-04-2387

ATTACHMENT

Description:

☐ State Court Record ☐ State Court Record Continued

☐ Administrative Record

☐ Document continued - Part _____ of _____

☒ Exhibit(s) number(s) / letter(s) Exh #101

Other: Plt's First Amended Habeas Corpus

EXHIBIT 101

PA: Second Interview with Sgt. W. Allen: 02/21/02

Today's date is October 21st, 2002, it's approximately 10:55 A.M. I'm presently located at 1301 Franklin, conducting an interview with Perry Austin. My name is Sergeant Waymon Allen, City of Houston Police Department Homicide Division. This interview is being conducted in reference to Case Number 900-506-92-K as in King. The complainant is David Kazmouz. The investigation was initiated on August the 19th 1992, and David resided at 6418 Leader St., in the city of Houston, Harris County, Texas. This offense is a capital murder. Um, uh, present with me is Perry Austin. Perry, will you say your name for the record?

Perry Allen Austin.

And how old are you, Perry?

42.

And your date of birth?

6/23/59.

And, uh, Perry, you and I have spoke on several occasions in the past, is that correct? You are aware at this moment that you are charged with capital murder, is that correct?

Yes.

Yeah. And the previous times that we've spoken, um, concerning taped conversations, um, I personally have given you your legal warning on several occasions, is that correct?

Yes.

On each of those occasions did you understand your rights?

Yes.

And did you give them up and give me a statement?

Yes.

Did, at any time, um, including today, have I ever promised you anything, or forced you, or coerced you in any way to give me your statement?

No.

OK. So you voluntarily gave those statements?

Yes.

And you're aware that we're recording this conversation today?

Yes.

Um, and I understand that 'cause you are charged, it's my understanding that you have waived right to counsel and you are representing yourself in the impending trial, is that correct?

Yes.

And you have consulted I believe with some attorneys concerning this case, is that correct?

Yes.

And you have chosen to represent yourself. Is that right?

Yes.

I would like to speak with you further concerning this investigation. I've told you earlier, we've been talking for some time, but um, I want to speak with you further concerning the interview that you gave me back on January 30th, 2001, last year, and during that interview you admitted what?

That I killed David Kazmouz.

And, again at that time, um, let me just ask you, why did you give me that statement?

Why? Because I did it.

OK. Alright. Before I go any further I'd like to (incomprehensible) the statements, prior to talking with you further, I'm going to give you the Miranda like I did the other day, OK? And be sure to speak up, 'cause your voice is kind of soft. You have the right to remain silent and not make any statement at all, and any statements you make will be used against you, and probably will be used against you, at your trial. You understand that right?

Yes.

Any statements you make may be used as evidence against you in court. Do you understand that right?

Yes.

You have the right to have a lawyer present to advise you prior to answering any question. Do you understand that right?

Yes.

If you are unable to employ a lawyer, you have the right to have a lawyer appointed to advise you prior to answering any questions. Do you understand that right?

Yes.

You have the right to terminate this interview at any time. That means you can stop at any time. You don't have to talk to me or any other law enforcement officers. Do you understand that?

Yes.

OK. Having read you these rights, are you willing to give them up, and without counsel being present, give me this statement concerning this investigation?

Yes.

OK. And, this is taking it a little further. Um, I know that there are some attorneys that you spoke with, uh, since you've been charged. If it was your desire to have one of those attorneys here then that could be arranged, do you understand that?

Yes.

OK. And is it – do you want an attorney here or are you willing to speak to me without an attorney?

I'll speak to you without an attorney.

OK. Um, I believe that last year during the course of that statement you had indicated to me that, um, you had gone to uh, David's house, on or about August 19th, 1992, you didn't recall the exact date, but to refresh your memory I (incomprehensible) that would be the same day?

Yessir/

And why did you go there?

I was looking for Kareem.

And Kareem was who?

Kareem was David's older brother.

OK. And about how old was Kareem then, to the best of your recollection?

Sixteen or seventeen, something like that.

And do you recall about how old David was?

Nine.

OK. So tell me when you got to Kareem and David's home, uh, what happened?

Uh, I pulled up the driveway, started honking my horn. Nobody came up. Uh, David came up. Just wanted to know what I was looking for, and I said, uh, Kareem. He told me Kareem was at the GPS station. So he said do you want my help to go look for him, and I said sure. And he jumped in the car and we went down to the GPS but he wasn't there. (Incomprehensible) I didn't see his car there, no.

Where did you go next?

Actually we were just driving around in circles for a while. I was, pretty mad. \pretty upset.

You were upset?

Right.

What were you upset about?

About some drugs.

What kind of drugs are we talking about?

Cocaine.

Cocaine? How much cocaine?

About a pound.

Around a pound? Ok. And, why would you have had possession of these drugs?

I was moving for some people. I wasn't selling(?) I just-somebody needed some drugs, I would pick it up from over here, I would deliver it, it was delivery.

OK. And these people would pay you for that?

Right.

OK, 'cause back then in 1992 you were working at Moeller's bakery, off Bellaire, is that right, and that's pretty minimum wage?

5.15 an hour.

OK. Um, and, would these people pay you in cash?

Uh, no.

How did they pay you?

Deals

Drugs buys? (?)

Right.

And you're pissed off why?

'Cause some drugs they went missing.

OK. Where were the drugs?

In the trunk of my car. I kept 'em in a box that I kept all my tools in.

Um-hmm.

Who knew that those drugs might be there?

Everybody.

Um-hmm.

Everybody should have known that. Jennifer. Jennifer's old boyfriend used to deal in drugs and uh she knew about it.(incomprehensible) and, uh, she knew about it.

Jennifer knew you were running drugs?

Right. She should have known. That's where all the money come from.

Did she ever see the dope? To the best of your knowledge?

She seen the money. I take care of her.

I see. Um, OK, so you're pissed off at Karem 'cause you thought he mighta took the drugs?

Right.

Why him?

Cause I figure he's the only one who'd have the opportunity to. 'Cause I was always at his house. And I was always leaving my keys sitting on the table when I go running around doing

something else or running to the store. Stop 'n Go. I was doin' stuff like that, 'cause I was comfortable at his house.

OK.

So.

Alright so you're riding around and you're pissed off, what are you thinking about?

How'm I gonna pay off these people. These are real chollos.

OK, the chollos. Southwest chollos. Do you remember anybody that you dealt with?

No. I don't *recall*.

OK. Um, so what'd you do next?

I take, I cant find David-I cant find Karem so I take David because I was intending to kill Karrem you know at first. Because I couldn't find him I took David. Down this dirt road.

Ok go ahead and tell me about that.

Alright. Pulled off, went down this dirt road, pulled off at the side of the road, I got out, he stayed in the car, he said you be right back I told him to get, I opened the door and he got out (inaudible).I took him to these rocks shot him up with dope. After I shot him up with dope I tied him up and cut his throat.

When you shot him up with the dope, what happened?

He was throwing up. White stuff was coming out of his mouth.

What kind of dope was it?

Demerol.

And when you tried to set up (sedate?) and you shot him up with the dope what did you do?

I tied him up.

What'd you tie him up with?

A rope.

And where did that come from?

Out of my trunk.

OK. And how did you tie him?

I tied his arms behind his back, and looped the rope around his neck.

Did you, tie him any other way besides that, that you recall?

No.

If you're mad at um, Karem, and suspected that he'd taken the dope. Why didn't you just wait and catch him?

Cause I wanted to hurt him. All I could think about was how am I going to pay these people, they were going to kill me if I didn't have the dope. I was sure he had done it and I wanted to hurt him so I took it out on David.

OK. Now this area where you took him off this dirt road what street, nearby street, major street is it on?

West Belfort.

And you used to live near that area is that right?

Yes.

And where did you live?

Keegans Ridge Apartments

And who did you live with?

John Maranto

And did you go to that apartment that day?

We drove by it but we did not stop.

Is there any reason why you drove by or not?

Tried to see if he was home.

Now, the reason that I'm here today is that I told you that I believe the statement that you've given me last year, and I was, um, uncomfortable with your explanation as to you motive for killing David because you indicated that you were dealing and transporting narcotics and the reason why I recollected that due to your lifestyle didn't indicate, there isn't any evidence of you

having any large sums of money, or really a lifestyle that would indicated that you were making a lot of money. What do you have to say about that?

Its probably my lifestyle because I had a one room efficiency I (inaudible) buy a car (inaudible) time ago. I was just like uh the car cost a lot of money, for upkeep, cause the transmission was shot, it was costing me four or five (inaudible) just to keep it going. I was trying to help Lori out with the kids trying to get the kids stuff, (inaudible) Jennifer and Lora her Mom we went out, me and Jennifer did, just about every night, you know, drinking and partying. And uh

Was that Jennifer Ortega?

That's right, Jennifer Ortega.

Her mother was Lora?

Lora. We'd go out on weekend. Me, Jennifer, Lora out and party.

Really depressed(?) I'd try to take her out if she was every tired of Jennifer, Bobby, I'd buy her stuff, clothes. We'd go to clubs afterwards (inaudible) everyday, something like that.

I'd take her friends out too with us, we'd go to concerts. We went to a couple concerts over in Houston. (inaudible)

Did you ever say anything to David when this was going on and you took him out of the car did you ever say anything to him about why you were doing this, or anything?

No.

Did David ever outcry or say let me go or say what are we doing here or try to get away?

No.

What did he do?

He just sat there in the car till I told him to get out, I opened the door for him, got out

How did he-

I just guess he was in shock because Hhe didn't say nothing he just got out

Didn't ask where you was going?

Did he try to break away or anything?

No.

Why not?

I don't know

Because you had a hold of him?

No

Did you have anything else?

I had a knife.

Ok, did he see the knife?

Yes

He didn't say anything like what is (inaudible) Perry?

Not a word the whole time. He never said not one word.

In the car?

I don't think so.

You know that David was an outspoken kid, kinda abrupt.

He was kinda really tongue tied. That's kids you know. I think well a lot of rowdy kids are out there they didn't have a dad living with them so so the problem is you know with no dad around they didn't have too much discipline.

Did David trust you?

I guess he did he got in the car with me.

Ever been in the car with you before?

Yes he had

Did David's mother, or anybody an adult for example give you permission to take David that day?

No, they didn't.

When you picked up David that day, were you already thinking about doing something to him or is that something you thought about doing something to somebody else?

I was thinking mostly about Karem, it didn't pop into my head until we drove around for a while, after we hit the DPS and his girlfriend and we drove around for a while and I was stewing about it, it just popped into my head get David instead.

Did anything else happen between you and David when you were in the car with him

No

Nothing

Was anybody else ever in the car with you and David?

That day

Um-hmmm

Not that day

Is anybody else involved in David's killing?

No, sir.

Was David assaulted by anyone besides yourself that day?

No, sir.

What you're saying to me is the motive that you the reason that you killed David is what?

'Cause I thought his brother had stole some dope from me I couldn't find his brother so I took it out on David instead.

OK. If there was any type of sexual assault on David that day would you tell me?

Yes sir. Can we get off the record?

Sure we can talk off the record. We're going to go off the record just a moment it's 11:10 A.M.

This is Sgt. Allen we're back on the record it's 11:19 A.M. We were off the record briefly at your request is that right Perry?

Yes.

Did anything improper occur on my behalf while we were off the record?

No sir.

I didn't threaten you or hit on you, promise you anything, you were uncomfortable with the questions we discussed and now we're back on record?

Yes.

OK. It still is February 21, 2002. Um, one of the things I was curious about, Perry, is that- let me ask you, did you ever find out who took the dope?

No I didn't

Did you ever confront Kareem with your belief that he'd taken the drugs?

Yes I did.

And when did that happen?

Ugh the same day or the day after.

Ok. And of course during that time when I say the same day or the day after, um David's family had notified law enforcement concerning his disappearance is that right?

I guess so.

At some point didn't you become aware that David had been reported missing and offer to hand out some (inaudible) or some kind of bulletins or something like that?

Oh, yes.

(inaudible) started handing them out to strangers but then I put them in my trunk or back seat.

Ok

Did um during that time frame somewhere in that time frame lets just say during that week did (inaudible) confront Karrem with taking a stake(?) ?

Correct

And did he admit taking it or deny it?

Denied it.

Did you ever indicate to him that you had done anything to David because you believed he'd taken the drugs?

No.

Why if you believed Karem took the dope how come you didn't do anything to him?

'Cause I already did something to his brother. My thinking right there was, you know, I couldn't hurt Karem, because I couldn't find him that day. So hurting his brother, instead of hurting him that would hurt him worse (inaudible). So I did get back at him.

Get back at Karem.

Yeah.

So what about the people that you were transporting for, what happened about that?

I got put in prison.

You eventually got arrested, that's correct. But prior to that, that was some months later before you got arrested, during that time between August and September,

That's right

so it wasn't really that long that you were out, that's correct.

That's correct

So did you ever hear from these people any more about it?

Yes I did.

And..

Not when I was in prison, no, but when I was out there yes I did because they wanted the dope, they wanted the money or they wanted somebody's life. At that time I didn't have the money, I didn't have the dope and I wasn't willing to give up my life.

And risk the (inaudible) South West Cholos

Yes

Where did the, I think you told me this last year, where did the Demerol come from?

The hospital

You said you'd stole it right?

They just had it sitting out in the carts all the time.

What did you inject David with Demerol?

To put him out. Knock him out first

What was your thinking about that? Why knock him out?

(inaudible) it was gonna hurt and I didn't have the guts for it. I've been stabbed before and it hurt. That's not something I think anyone should go through.

Ok. So what was your thinking about it with, that it would ease the pain for him and make it easier for you too or what?

I guess so I guess (inaudible) you wouldn't do that way. I really don't know. I got stabbed right here I know it hurts myself.

After you killed David what did you do?

Just left him there and tried to get away (?)

But did you cover him up or anything?

No.

You drove back home to where?

My apartment

And where would that apartment be?

North West (inaudible) Gardens Apartments

The knife that you used to cut David's throat, what did you do with that knife?

Threw it off the railway tracks, I guess that's West Park Road I think I remember the sign because I rode in the middle of the road with the (inaudible) behind. Apartments, Pizza Hut something like that railroad tracks crossing (inaudible ??)

You told me that was a pocket knife that had a kind of red colored handle on it. A folding knife?

Right

Do you remember if it had one or two blades

No.

Ok

Is there a ditch along that area beside the railroad tracks, do you recall?

I don't recall

Did you just toss it toward the railroad tracks?

And it was somewhere between (inaudible) for the record just tell me for the tape, Chimney Rock and the Pizza Hut and some apartments and it was before you get to the 610 loop.

Yes

Where Westpark meets up with the 610 loop.

Yes

What you're telling me about this offense, this crime, is it the truth?

Yes.

And, what made you decide to come forward last year, in January, and contact me about this?

Depression I guess. You know

For a long time?

(Inaudible) I couldn't stop dreaming about it, I couldn't stop seeing pictures of it. So I just kept doing drugs getting in trouble with doing drugs. I had to stay high every day or else I would have to think about it. And it really comes up mostly when I'm locked up in seg in solitary, you know. Cause in seg and solitary I can't do no drugs I just got tired, the drugs weren't doing nothing really, they weren't helping. I'd gotten locked up in solitary when I mailed it. I had written the letter a really long time before I think I was depressed when I wrote that letter for at least ten years. They transferred me to Hughes Unit I got in a fight with a guard and got put in solitary, when I was in solitary there was no more drugs I had all day and all night to (inaudible) think about it, think about it was all continuing (inaudible) my head. It used to be (inaudible) didn't bother me, anything I did, it never bothered me but ever since this thing happened to him I'd be watching TV and I'd be thinking and I would just start crying stuff like that. I don't know something about the depression I guess is what it is. I was always raised not to show any type of emotion and I was always told I don't have a conscience. (inaudible) I was always told that by my mamma so I believed it.

What about your father, tell me about that?

They're just different people

I've been going to counseling and psychiatrists since I was a kid. I guess I had behavioral problems and I was always in trouble at school. I was emotionally disturbed, psychiatrist said at my trial that I didn't have no feelings that I had no conscience at all. My dad said that before, but my mother used to say it to me too. That was the way I was raised.

I just want to get this over with and close it up. It has to stop (inaudible). I murdered I confessed to try and stop it, all I know that if I die it will stop. The only reason I haven't killed myself is because you know, I actually believe there is a hell (inaudible). Put it this way I'm not killing myself, I'm just not putting on a defense. I regret something I did, Im gonna pay for it Im not gonna make no excuses no nothing.

Did you ever tell anybody else besides me or Richard Kimball?

I tell everybody that in the house, in the house, (inaudible)

(inaudible) Referring to other people here

How about any friends or anyone like that?

Yeah

Who did you tell?

People on I was writing to

(inaudible)

You've come forward and admitted this, and you've said it over and over again, it's because you did it, is that right?

Right

Is there anything else that you would like to tell me?

No.

Then, I'll complete the interview at this time. It's 11:34 A.M., February 21st, 2002.